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PUBLIC HEARING
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.
DATE: February 28, 2002

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

1 A P P E A R A N C E S

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COMMISSION MEMBERS

3

ANNETTE PORINI, Chairperson

4

Representative of B. Timothy Gage, Director
State Department of Finance

5

SHERRY WILLIAMS

6

Representative of Steven Nissen, Director
Office of Planning and Research

7

JOHN HARRIGAN

8

Representative of Kathleen Connell
State Controller

9

JOHN S. LAZAR

10

City Council Member
Turlock City Council

11

WILLIAM SHERWOOD

12

Representative of Philip Angelides
State Treasurer

13

JOANN E. STEINMEIER

14

School Board Member
Arcadia Unified School District

15

16

17 COMMISSION STAFF

18

PAULA HIGASHI, Executive Director

19

PAUL M. STARKEY, Chief Legal Counsel

20

ERIC FELLER, Staff Counsel

21

CAMILLE SHELTON, Staff Counsel

22

KATHERINE TOKARSKI, Staff Counsel

23

24

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1 PUBLIC PRESENTATIONS

2 ROBERT BALLENGER
County of Los Angeles

3
4 RAMON de la GUARDIA, Deputy Attorney General
Office of the Attorney General

5 SANDRA DUMLAO, Staff Analyst
Human Services System
6 Department of Community Health
Administrative Support Unit
7 County of Fresno

8 JIM FOREMAN
Department of Finance

9
10 SUSAN S. GEANACOU, Senior Staff Attorney
Department of Finance

11 VIRGINIA HANDLEY
The Fund for Animals

12
13 STEVEN B. JOHNSON, Assistant Laboratory Director
Scientific Investigation Division
Los Angeles Police Department

14
15 RANDY KATZ, Finance Budget Analyst
Department of Finance

16 LEONARD KAYE, Esq., Certified Public Accountant
Office of the Auditor-Controller
17 Accounting Division
County of Los Angeles

18
19 TOM LUTZENBERGER
Department of Finance

20 MATT PAULIN, Budget Analyst
Department of Finance

21
22 KEITH PETERSEN, MPA, JD, President
SixTen and Associates

23 MICHAEL G. ROSS, Animal Services Director
Animal Services Department
24 Contra Costa County

25

1 PUBLIC PRESENTATIONS, continued

2 SHAWN D. SILVA, Staff Counsel
State Controller's Office

3

PAMELA A. STONE

4 Maximus
on behalf of Counties of Fresno and Tulare and
5 City of Lindsay

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2	AGENDA ITEM	PAGE
3	1 Approval of Minutes, January 24, 2002	7
4	2 Hearing and Decision, Test Claim, Community College District Budget and Financial Reports	9
5	3 Hearing and Decision, Test Claim, Pupil Promotion and Retention (Postponed)	21
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8	6 Informational Hearing, Adoption of Statewide Cost Estimate, County Treasury Oversight Committees	8
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3	Page	Line	Correction
4	2	6	change "Steve Nissen" to "Tal Finney, Interim Director"
5	15	10	change "en pointe" to "on point"
6	67	24	change "it causes a departure from" to " good cause exists to depart from this"
7	68	04	change "in" to ", and"

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1 BE IT REMEMBERED that on Thursday, the 28th

2 day of February, 2002, commencing at the hour of
3 9:41 a.m., thereof, at the State Capitol, Room 126,
4 Sacramento, California, before me, Yvonne K. Fenner,
5 a Certified Shorthand Reporter in the State of
6 California, the following proceedings were had:

7 --o0o--

8 CHAIRPERSON PORINI: Okay, we'll go ahead and
9 call to order the February 28th meeting of the
10 Commission on State Mandates. May I have a roll call.

11 MS. HIGASHI: Mr. Harrigan.

12 MR. HARRIGAN: Here.

13 MS. HIGASHI: Mr. Lazar.

14 MR. LAZAR: Here.

15 MS. HIGASHI: Mr. Sherwood.

16 MR. SHERWOOD: Here.

17 MS. HIGASHI: Ms. Steinmeier.

18 MS. STEINMEIER: Here.

19 MS. HIGASHI: Ms. Williams.

20 MS. WILLIAMS: Here.

21 MS. HIGASHI: And Ms. Porini.

22 CHAIRPERSON PORINI: Here.

23 MS. HIGASHI: The first item's item 1, adoption
24 of proposed minutes of the January meeting.

25 CHAIRPERSON PORINI: Questions, comments,

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1 corrections? Motion?

2 MR. HARRIGAN: So move.

3 CHAIRPERSON PORINI: Motion by Mr. Harrigan.

4 MR. SHERWOOD: Second.

5 CHAIRPERSON PORINI: Second by Mr. Sherwood.

6 All those in favor indicate with "aye."

7 MULTIPLE SPEAKERS: Aye.

8 CHAIRPERSON PORINI: Opposed?

9 Minutes carry.

10 MS. HIGASHI: The proposed consent calendar

11 today consists of one item, item 6, adoption of the

12 proposed statewide cost estimate for county treasury

13 oversight committees.

14 CHAIRPERSON PORINI: Okay. Questions, comments?

15 Any member want to pull the item off consent?

16 Okay, motion.

17 MR. SHERWOOD: Move.

18 MS. STEINMEIER: Second.

19 CHAIRPERSON PORINI: Motion by Mr. Sherwood,

20 second by Ms. Steinmeier.

21 All those in favor of adopting the consent

22 calendar?

23 MULTIPLE SPEAKERS: Aye.

24 CHAIRPERSON PORINI: Opposed?

25 Consent calendar carries.

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1 That takes us to our first test -- well, our

2 first test claim there, item No. 2.

3 MS. HIGASHI: Item No. 2 is the test claim that
4 was continued from last month. Katherine Tokarski will
5 present this item.

6 MS. TOKARSKI: Good morning.

7 Claimant, Santa Monica Community College
8 District, submitted three test claims alleging
9 reimbursable state mandated cost for the activities
10 performed by community college districts for
11 periodically preparing and submitting various budget and
12 fiscal management reports to the State, and for engaging
13 in annual financial and compliance audits. Due to the
14 overlap between the test claims, the three test claims
15 were consolidated for hearing. This test claim was
16 first presented at the January 24th, 2002 Commission
17 hearing. The Commission continued the hearing to have
18 additional time to consider several of the issues
19 discussed.

20 The claimant contends that all of the test claim
21 legislation and executive orders impose new programs or
22 higher levels of service upon community college
23 districts by requiring specific new activities related
24 to the administration of district budgets, audits and
25 fiscal management practices. However, staff finds that

1 under prior law now in Education Code section 84030,
2 community college districts were required to engage in

3 extensive budget, fiscal management and audit
4 activities, including following a standardized
5 accounting system as expressed in a state-published
6 accounting manual.

7 In addition, prior law established the
8 requirements of Education Code sections 84040 and
9 84040.5 for districts to have an annual audit utilizing
10 audit standards and procedures prescribed by the State
11 and performed by a CPA at community college district
12 expense. Therefore, staff finds that compliance with
13 Education Code sections 84030, 84040, and 84040.5 and
14 required use of a budget and accounting manual and an
15 audit manual do not constitute new programs or higher
16 levels of service.

17 Claimant also included 22 title 5 regulations in
18 the test claim. Statutes of 1990, chapter 1372 repealed
19 a number of Education Code sections contingent upon the
20 adoption of corresponding regulations. The legislature
21 has the authority to make the operative date of any part
22 of a statute dependent upon contingency. Accordingly,
23 staff finds that the Education Code sections named in
24 section 708, subdivision (a) continued in legal,
25 operative effect until each corresponding regulation was

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1 adopted, avoiding any gap in the legal requirements.

2 At the last hearing, staff presented a
3 correction to the final staff analysis related to this

4 issue, stating that former Education Code section 84041,
5 requiring employee indemnity bonds, did not appear in
6 the list of contingently-repealed code sections. Staff
7 has since found that the first sentence of Education
8 Code section 84041 is a listed code section, although it
9 is out of numerical order. Therefore, staff returns to
10 the original recommendation that the Commission deny
11 finding a reimbursable state mandated program for
12 employee indemnity bonds under title 5, section 58318,
13 which is a continuation of the law of the first sentence
14 of Education Code section 84041.

15 Five of the test claim regulations are based
16 upon new law. Staff find that California Code of
17 Regulations, title 5, sections 58310, 58312, 58314,
18 59104, and 59112 impose new programs or a higher level
19 of service within existing audit or budget programs for
20 specified new activities and impose costs mandated by
21 the State. Accordingly, staff recommends that the
22 Commission approve this test claim for the specific new
23 community college district activities as set forth in
24 the conclusion of the staff analysis, beginning on page
25 36.

11

1 Will the parties and representatives please
2 state your names for the record.

3 MR. PETERSEN: Keith Petersen, representing

4 Santa Monica Community College District.

5 MR. DE LA GUARDIA: Ramon de la Guardia, deputy
6 attorney general, representing the Department of
7 Finance.

8 MR. FOREMAN: Jim Foreman, Department of
9 Finance.

10 MR. KATZ: Randy Katz, Department of Finance.

11 MS. HIGASHI: Will the witnesses and parties be
12 sworn.

13 Do you solemnly swear or affirm that the
14 testimony you are about to give is true and correct
15 based upon your personal knowledge, information, or
16 belief?

17 MULTIPLE SPEAKERS: I do.

18 CHAIRPERSON PORINI: All right. Mr. Peterson,
19 would you like to begin?

20 MR. PETERSEN: Certainly. Good morning.

21 The threshold issues remain the same. There's
22 been some additional staff work, some additional court
23 cases that have not changed the body of evidence the
24 staff -- it has increased, but it has not changed the
25 body of evidence that the staff has provided you.

12

1 The first major threshold issue is whether there
2 is a gap. It was clear that the Education Codes were
3 repealed in 1990. Staff is suggesting that section 708
4 of that law bridges this gap by the legislative intent

5 that everybody continue performing the duties the prior
6 law required until such time that the regulations
7 replaced the repeal of law. It's quite appropriate for
8 regulations to repeal and replace law. There's no
9 dispute there. The dispute is the gap, period, and
10 whether legislative intent can bridge that gap.

11 If you believe legislative intent can bridge
12 that gap, you still have the mechanical problem that did
13 not change from last month and that is the regulations
14 are matched back to the repealed code sections, and you
15 need to also match the repealed code sections to find if
16 there ever was a new regulation replacing it. If there
17 never was a new regulation replacing it, you still have
18 these repealed statutes somewhere in the ether as law
19 because you have a legislative intent saying they should
20 continue as law. And those should be recognized so the
21 colleges can know what the requirements are. Right now
22 there's no law on the book. But if you say there's a
23 law out there because of the gap, they should know about
24 that.

25 The other threshold issue are the manuals.

13

1 Staff essentially says a manual is a manual is a manual.
2 It's quite clear that there was a change from a school
3 accounting manual to a -- excuse me, a combined
4 school-college manual to a college-only manual and that

5 there had been several major revisions of the college
6 audit and accounting manual since 1976. And it's
7 inappropriate to assume that there has been no increase
8 in work or additional duties required in more than 20
9 years. A manual is not just a manual. It's -- like the
10 laws involved in this case, they're subject to
11 evaluation and sequel and change from year to year.

12 Essentially the greatest issue here is the gap
13 and whether you believe legislative intent will patch
14 over that gap. As I said last month, in my recollection
15 this Commission has never found a reimbursable state
16 mandate based solely upon legislative intent. If you
17 today decide that legislative intent is sufficient to
18 cover the gap, there's about 20 test claims I'd like to
19 refile.

20 CHAIRPERSON PORINI: Okay. Questions for
21 Mr. Petersen?

22 Mr. De la Guardia.

23 MR. DE LA GUARDIA: Thank you, Madame Chair.

24 As I stated last week -- last meeting, our
25 position is that there really is no program or level of

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1 service for fiscal integrity, and that claim should be
2 disposed of on that basis. We understand the staff
3 disagrees with that.

4 If we address the particulars, what the
5 claimants would call legislative intent is clearly

6 operative language of the statute and the legislature
7 does have the power to declare when a statute will be
8 operative, and that's what they've done in this case.
9 And that's not intent language, and staff has given you
10 case law en pointe on that.

11 With respect to the manuals, they have to be
12 updated. It's a preexisting program, having these
13 manuals. There's no higher level of service or new
14 program to update these manuals to keep them current.

15 We agree with staff's analysis that there was no
16 error in the original thing with respect to the code
17 section dealing with indemnity bonds.

18 That's all I have at this point. We would --
19 you know, with our objections stated, we would submit
20 the matter unless the Department of Finance people have
21 anything additional.

22 MR. FOREMAN: Jim Foreman, Department of
23 Finance. No, we really don't have anything to add at
24 this time. We continue to believe that no additional
25 responsibilities have been added to the duties of the

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1 community colleges, and so we continue to believe that
2 there should be no additional costs.

3 CHAIRPERSON PORINI: Questions from members?

4 Ms. Steinmeier.

5 MS. STEINMEIER: I would like Katherine to

6 address the gap issue with regards to legislative intent
7 as versus actual statutory language, expand on what
8 Mr. La Guardia (sic) says.

9 MS. TOKARSKI: The portion of Statutes of 1990,
10 chapter 1372 that we're referring to, section 708,
11 subdivision (b) -- and if you'd like to refer to it,
12 it's on page 15 of the staff analysis -- reads:

13 "It is the intent of the legislature
14 that there be no lapse in the requirements,
15 rights, responsibilities, conditions, or
16 prescriptions contained in the statutes."

17 This language, I think, is misleading in using
18 the word "intent," the intent of the legislature. It's
19 not -- the following sentence is where the operative
20 language lies. It says:

21 "Should the Board of Governors fail to
22 adopt and put into effect regulations in
23 accordance with subdivision (a), the listed
24 statutes shall remain operative until the
25 effective date of the corresponding Board of

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1 Governors regulations."

2 In other words, that's the operative language of
3 that portion of the statute. If the legislature was to
4 create this as an urgent -- as urgency legislation, they
5 would use something similar at that point at the end of
6 the -- of the bill. And this is language that

7 establishes their ability to place the repeal of those
8 listed code sections contingent upon the adoption of the
9 corresponding regulations.

10 MS. STEINMEIER: One other question, on the
11 audit manual situation, I recall that the K-12 people,
12 say a school district, has brought their audit manuals
13 to us as a claim, and they specifically identified what
14 changes had occurred in the audit manual, and we found
15 for some of them. Is that right or wrong? That's my
16 recollection.

17 CHAIRPERSON PORINI: I'd have to go back to
18 staff's recollection. I don't know.

19 MR. PETERSEN: That was the financial compliance
20 audits manual.

21 MS. TOKARSKI: It was test claim 4498 and
22 4498(A). And what 4498(A) did was go back and
23 specifically identify new programs in an updated version
24 of the manual, and then staff was able to do a
25 step-by-step analysis of the identified pages and

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1 sections and see whether, in fact, those specific things
2 were required for school districts to do as part of
3 their audits. Previously some of the things that they
4 claimed were new, some of them weren't. What was new
5 was found to be a new program or higher level of service
6 for auditors in completing the audit.

7 MS. STEINMEIER: So there would be no reason why
8 community colleges couldn't bring a similar claim if
9 they so chose to do that hard work to find those
10 differences?

11 MS. TOKARSKI: Yes.

12 MS. STEINMEIER: That's all, thank you.

13 CHAIRPERSON PORINI: Okay. Mr. Harrigan, you'd
14 asked for --

15 MR. HARRIGAN: I did.

16 CHAIRPERSON PORINI: -- chart, which staff
17 provided. Any specific questions now?

18 MR. HARRIGAN: Things are much clearer this
19 month, thank you. I would like to compliment the staff
20 on the table, the outline, outline of the issues. It
21 certainly brought some clarity from at least my
22 perspective, so thank you very much.

23 CHAIRPERSON PORINI: Okay. Any additional
24 questions or comments? All right, Ms. Williams.

25 MS. WILLIAMS: I think I'd like to commend staff

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1 on just a wonderful job in presenting this. It was
2 very, very complicated and very confusing.

3 Personally, I find that the legislature was very
4 clear on what it intended here and what it put forward.
5 I don't find any gap at all. I move -- I don't know if
6 it's time to move, but I would recommend that we adopt
7 the Commission's recommendations. I would also

8 recommend that we decline the claim totally, including
9 the five regulations that we mentioned separately.

10 MR. PETERSEN: I'm sorry, I couldn't hear.

11 MS. WILLIAMS: I recommend that we just reject
12 the entire claim. I don't see where there's any mandate
13 at all.

14 CHAIRPERSON PORINI: Okay. We have a motion to
15 reject the entire claim. Do I have a second?

16 I'll go ahead and second that.

17 Any discussion?

18 Roll call.

19 I'm sorry.

20 MS. STEINMEIER: My discussion is I think that
21 the staff has clearly identified, granted very small,
22 small differences in the regulations, but I do believe
23 that Katherine has done an excellent job in identifying
24 them. They're not huge, but they are real, so I could
25 not support that motion.

19

1 CHAIRPERSON PORINI: Okay.

2 MS. HIGASHI: Are you ready for the vote?

3 CHAIRPERSON PORINI: Yes.

4 MS. HIGASHI: Mr. Harrigan.

5 MR. HARRIGAN: Aye.

6 MS. HIGASHI: Mr. Lazar.

7 MR. LAZAR: No.

8 MS. HIGASHI: Mr. Sherwood.
9 MR. SHERWOOD: Aye.
10 MS. HIGASHI: Ms. Steinmeier.
11 MS. STEINMEIER: No.
12 MS. HIGASHI: Ms. Williams.
13 MS. WILLIAMS: Aye.
14 MS. HIGASHI: Ms. Porini.
15 CHAIRPERSON PORINI: Aye.
16 MS. HIGASHI: Motion carries.
17 CHAIRPERSON PORINI: Thank you very much.
18 MR. PETERSEN: I have a motion relative to the
19 claim. Should I enter it now?
20 The claimant withdraws all allegations regarding
21 audit manuals and accounting manuals from the test
22 claim.
23 CHAIRPERSON PORINI: All right.
24 Ready to go ahead with our next item?
25 MS. HIGASHI: Before we proceed, Ms. Tokarski

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1 has a question for clarification she wishes to ask.
2 CHAIRPERSON PORINI: All right.
3 MS. TOKARSKI: I ask the Commission for some
4 clarification on what they would like next month as far
5 as the statement of decision for the five regulations
6 that you're asking to be denied in addition to the rest
7 of the test claim that I already analyzed.
8 CHAIRPERSON PORINI: As the maker of the motion,

9 do you want to make a comment? I think the motion was
10 simply to deny the entire test claim.

11 MS. STEINMEIER: That's the statement.

12 CHAIRPERSON PORINI: That's the statement.

13 MS. TOKARSKI: Is it based on the Department of
14 Finance analysis?

15 CHAIRPERSON PORINI: Yes.

16 MS. HIGASHI: Item 3 is postponed.

17 And this brings us to item 4, adoption of
18 proposed parameters and guidelines for the animal
19 adoption test claim. This item will be presented by
20 staff counsel Camille Shelton.

21 MS. SHELTON: Good morning.

22 This item is the proposed parameters and
23 guidelines for the animal adoption test claim. This
24 item was originally presented to the Commission in
25 August. The item was continued to further address some

21

1 of the issues raised at the hearing.

2 As indicated in the analysis, staff has made
3 some changes to the proposed parameters and guidelines.
4 Changes have been made to clarify the one-time
5 activities, the activity of acquiring additional space
6 and remodeling existing buildings, providing prompt and
7 necessary veterinary care, and to clarify the offsetting
8 savings and other reimbursements. The proposed

9 parameters and guidelines also provide reimbursement
10 under specified circumstances for animals that die
11 during the increased holding period.

12 Staff recommends that the Commission adopt
13 staff's proposed parameters and guidelines, which begin
14 on page 21. Staff also recommends that the Commission
15 authorize staff to make nonsubstantive, technical
16 corrections to the Ps and Gs following the hearing, if
17 it becomes necessary.

18 Staff proposes that the claimants and the state
19 agency representatives testify first, followed by
20 interested parties and persons. Will the claimants and
21 state agency representatives only please state your
22 names for the record.

23 MR. KAYE: Leonard Kaye, County of Los Angeles.

24 MS. STONE: Pamela Stone, on behalf of the
25 co-test claimant, County of Tulare.

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1 MR. BALLENGER: Bob Ballenger, County of Los
2 Angeles.

3 MS. DURLAO: Sandra Dumlao, County of Fresno.

4 MR. ROSS: Mike Ross, Contra Costa County.

5 MR. LUTZENBERGER: Tom Lutzenberger, Department
6 of Finance.

7 MS. GEANACOU: Susan Geanacou, Department of
8 Finance.

9 MR. SILVA: Shawn Silva, for the State

10 Controller's Office.

11 CHAIRPERSON PORINI: Maybe, Mr. Silva, if you
12 want to come up to one of these other microphones since
13 we're running out of space here.

14 All right. Mr. Kaye.

15 MR. KAYE: Thank you. Good morning.

16 We generally concur with your staff's analysis
17 but I'd like to make just a very few brief comments
18 about that analysis, which is before you today, and we
19 definitely urge your adoption of their proposed
20 parameters and guidelines. But I think a close
21 examination of their parameters and guidelines will find
22 that while it is their recommendation for reimbursement
23 of very important costs, it's a very, very
24 well-reasoned, highly-limited, very well-qualified
25 recommendation for funding which really does put very

23

1 specific and narrow parameters upon claimants.

2 I think if you look, for example, at their
3 position regarding the use of fee revenues and so forth,
4 I think, just a quote from page 7 of their analysis,
5 they find that the test claim legislation provides
6 sufficient fee authority for local agencies allowing
7 them to charge the original and/or adopted owners for
8 the cost of care, maintaining, and provide necessary and
9 prompt veterinary care for animals that are

10 relinquished, redeemed, adopted, or released to a
11 nonprofit agency. I mean, that is a very, very
12 substantial omission in the State's funding liability
13 for this program, and we bring that to your attention.

14 Nevertheless, we -- as I said before, we urge
15 your prompt adoption of these parameters and guidelines
16 today, and we concur with their findings for what is
17 reimbursable regarding the care, maintenance, and
18 necessary and prompt veterinary care and that it be
19 limited to animals that are ultimately euthanized.
20 Therefore, we urge your adoption so that the claiming
21 process can begin as soon as possible.

22 Thank you.

23 CHAIRPERSON PORINI: All right. Ms. Stone.

24 MS. STONE: Thank you very much, Madame
25 Chairman.

24

1 Members of the Commission, on behalf of the
2 County of Tulare we would like to thank your Commission
3 and the Commission staff for the diligent work that they
4 did do with regard to this particular test claim, and
5 particularly we would like to thank Commission staff for
6 efforts they took after the August 23rd hearing to
7 review some of the issues that were ambiguous and be
8 able to come to a good result regarding the issues over
9 which there had been some ambiguity and contention
10 previously. And on behalf of the County of Tulare,

11 we're urging you to adopt the staff's analysis.

12 CHAIRPERSON PORINI: All right. Next witness.

13 MR. BALLENGER: Madame Chairperson, Members of
14 the Commission, I'm Bob Ballenger, Los Angeles County
15 Animal Control. I have no statement to make; however, I
16 will be happy to answer any questions that the members
17 of the Commission might have.

18 CHAIRPERSON PORINI: All right. Next witness.

19 MS. DURLAO: Madame Commissioner, I am Sandra
20 Dumlao with the County of Fresno, and I would like to
21 thank you, the Commission and staff for all the work
22 that's been done on these parameters and guidelines.
23 Fresno County had a number of concerns that were taken
24 into consideration, and we feel pleased with the results
25 of those concerns.

25

1 We do have a question regarding the terminology
2 of the Ps and Gs on page 25, item 2, the paragraph that
3 starts "Eligible claimants" -- and the reason why we're
4 posing this question right now is to avoid disputes with
5 the State Controller later over the interpretation --
6 and where it says:

7 "Eligible claimants are only entitled
8 to reimbursement for the proportionate share
9 of actual costs required to plan, design,
10 remodel and/or renovate existing facilities in

11 a given fiscal year based on the pro rata
12 representation of impounded stray or abandoned
13 animals, dogs -- abandoned dogs, cats, and
14 other animals specified in Statutes 1998,
15 chapter 752 that are held during the increased
16 holding period specified in section 4(B) and
17 (3), (4) of these parameters and guidelines
18 and die during the increased holding period or
19 are ultimately euthanized to the total
20 population of animals housed in the facility."

21 And that brings my question, is the word
22 "facility" as it is used there. We agree that building,
23 you're just building one additional building to a
24 facility, that you examine the total number of stray or
25 abandoned dogs and cats which are ultimately euthanized

26

1 to the total number of animals housed in the building;
2 however, I'm concerned that the word "facility" may be
3 interpreted to mean all the buildings on a given campus.

4 Now, I'm asking for a differentiation between a
5 building at a facility and an entire facility. And
6 that's to avoid any confusion when you're in a situation
7 like Fresno where we have the existing facility and all
8 that was done was to build an additional building for
9 stray animals only. So we're asking just for a
10 definition or a clarification on that term, facilities,
11 versus one building added to a facility.

12 But we do concur with the Commission staff
13 finding there are no offsetting savings for animals who
14 are adopted during the additional holding period rather
15 than euthanized, as our experience has demonstrated that
16 the cost of feeding, sheltering, and caring for animals
17 is far greater than the cost of euthanasia. So thus to
18 the extent there's any additional holding period, even
19 if the animal is ultimately adopted, there are no
20 savings over the cost of euthanasia.

21 We would also like to thank the Commission for
22 appropriately addressing the issue of those animals or
23 stray animals, the abandoned or stray animals who die
24 during the additional holding period and finding that
25 these animals are within the set for which reimbursement

27

1 in appropriate.

2 Again, thank you.

3 CHAIRPERSON PORINI: All right. Camille, did
4 you want to comment on the definition at this point?

5 MS. SHELTON: Sure. That's a new comment that
6 was raised today, except that I believe when we were
7 talking about when you read the paragraph as a whole and
8 if you would -- if the Commission wants to change the
9 phrasing from facility to building, you can do that.
10 The purpose of this paragraph was -- of this section is
11 just to reimburse agencies for remodeling an existing

12 building or if they're remodeling the whole facility,
13 some agencies may be doing that too. The language of --
14 the paragraph was written broadly enough so that it
15 cover any situation.

16 I think the word "facility" can be used
17 interchangeably with building, if all you're doing is
18 renovating one building and trying to get reimbursement
19 for that one renovation or that one remodel.

20 I don't know, do you propose any other language
21 than facility? That was the intent.

22 MS. DURLAO: I think it still needs to be
23 distinguished, facility and building. I think both are
24 appropriate, depending on what your situation is.
25 Because if you're going to apply it to the total

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1 population in a facility, whereas ours is just the
2 building, the Controller may look at it as saying, well,
3 no, it's the facility.

4 CHAIRPERSON PORINI: Why don't you -- if I can
5 make a suggestion, how about you just change it to
6 "facility or building."

7 MS. SHELTON: That would work.

8 CHAIRPERSON PORINI: Would that clarify it?

9 MS. DURLAO: That would work.

10 MS. SHELTON: The claim on that section would
11 only be filed on what you are remodeling, so it depends
12 on the facts of each case.

13 CHAIRPERSON PORINI: Right. Right.

14 Okay. Mr. Silva.

15 MR. SILVA: I should add that's a nice segue for
16 me, because that is one of the first of our concerns on
17 our list. The phrase "housed in the facility" appears
18 in both paragraphs one and two which address new
19 construction and remodeling, and our concern is that it
20 would not be taken too narrowly, that is, if a -- if the
21 conclusion of the agency is that a new building is
22 necessary, that the -- that we look to the total
23 population within the preexisting facility and not
24 simply to the new building.

25 I think it's a fiction to say that the building

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1 was only built for strays simply because that's all you
2 place in there. We have to look to what existed prior
3 to the mandate and construction and after. And all that
4 is reimbursed is animals which are eventually euthanized
5 in the extra holding period. That's what creates the
6 need for additional space. And if you simply designate
7 a building as a stray building and put in the animals,
8 we know that the euthanasia rate is unfortunately very
9 high for strays, and that would simply create an
10 artificial distinction between the first building and
11 the new building, when really what we do is look at the
12 statute, not the building itself. And the only

13 additional burden is euthanized animals that were
14 strays, the three extra days or the appropriate number
15 of days, depending on how you operate your facility.

16 So we believe that at least in the second
17 paragraph, to put in "building or facility" is fine,
18 because it's talking about remodeling or renovation.
19 But when you go to the first paragraph, if you add in
20 "building or facility," it could be misinterpreted to
21 exclude the preexisting building and to attempt to
22 create a fiction of accounting and only reference those
23 animals, those strays which have been placed into that
24 building. And if that were the way it was interpreted,
25 we would disagree with that conclusion.

30

1 CHAIRPERSON PORINI: Camille.

2 MS. SHELTON: I don't know that I'm following
3 your argument, actually. The limitations -- if we're
4 talking just about paragraph 2, the limitations are
5 still there which do indicate the -- only the increased
6 holding period, which would be the program
7 reimbursement. So you have to compare the increased
8 holding period specified in sections 4(B)(3) and (4),
9 which are the holding periods for the dogs and cats and
10 those other animals, to the total population of the
11 animals housed in the facility, including those animals
12 that are excluded from reimbursement, which would be the
13 owner relinquished animals, during the entire holding

14 period required by the statute, which is the full
15 four-to-six-day period. So isn't that covering your
16 concern?

17 MR. SILVA: Well, the concern is that if --
18 Fresno has indicated that they have -- that the new
19 building will house only strays, therefore all of the
20 nonreimbursable animals will be in another building and
21 will not be counted against the amount of days, animals
22 days, however you want to define them, that are used in
23 the new building. So instead of -- normally you would,
24 if you just expanded a building, we would -- obviously
25 you'd have to cut out the number of animals that were

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1 eventually adopted or relinquished, owner relinquished,
2 from the strays, and then obviously you'd only go to the
3 additional three days, and then obviously only if those
4 animals were euthanized or died in the facility, because
5 you get to a much smaller number to base the proration
6 on and you have a much larger base to start from.

7 What they are attempting to do is -- as a
8 bookkeeping method or a housing method is to eliminate
9 the counting of all animal -- excuse me,
10 owner-relinquished or adopted animals -- well,
11 owner-relinquished would be the question --
12 owner-relinquished animals, so they've shifted all the
13 strays into one building and therefore they've greatly

14 reduced the denominator of this pro rata ratio simply by
15 identifying who goes into what type of building. That's
16 really a bookkeeping fiction, rather than a reality, a
17 change in reality and an increase in the need for
18 housing. And that's our concern, is that someone
19 attempts to greatly reduce the denominator, which would
20 obviously increase the ratio and increase the
21 reimbursable expenses.

22 CHAIRPERSON PORINI: Did that clarify it,
23 Camille?

24 MS. SHELTON: Well, it's a new argument that
25 hasn't been raised before.

32

1 CHAIRPERSON PORINI: Okay. Well, we'll get back
2 to it.

3 Ms. Stone, you wanted to comment on this?

4 MS. STONE: Yes, please, Madame Chair, on behalf
5 of the County of Fresno. I've worked with the County of
6 Fresno on this particular matter, and I am a resident of
7 the county of Fresno.

8 The County of Fresno, prior to the enactment of
9 the Hayden bill, had preexisting separate stray
10 facilities and a separate facility for
11 owner-relinquished animals, so there was already in
12 existence a separate facility for owner-relinquished
13 animals, which did not need to be renovated, so
14 therefore that particular facility had already been

15 built and constructed, and there was no need to expand
16 it under the Hayden bill. There was already a
17 preexisting separate stray animal shelter, and because
18 of the basic doubling in the number of strays that have
19 to be held under this legislation, a separate second
20 stray building was necessary to be constructed.

21 So contrary to Mr. Silva's thought, there has
22 been no manipulation of numbers because of the fact that
23 the manner in which Fresno County does it separates the
24 buildings for strays and owner-relinquished because of
25 the different problems presented by stray animals when

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1 you have no knowledge of their preexisting temperament
2 or medical condition when they arrive at the facility.

3 CHAIRPERSON PORINI: Okay. Camille.

4 MS. SHELTON: Turning to page 26 of the
5 parameters and guidelines, that describes the
6 documentation that has to be submitted with each claim,
7 and the very first bullet on the top of page 26 does
8 require the agency to identify the census of impounded
9 stray or abandoned dogs, cats, or other animals that
10 were impounded in 1998, which would be the year before
11 the enactment of the test claim legislation. So
12 wouldn't the Controller's Office have that information
13 by the documentation that has to be filed with each
14 claim?

15 CHAIRPERSON PORINI: So that would be the
16 baseline that they would work against.

17 MS. SHELTON: Right.

18 MR. SILVA: I would agree, but I think that that
19 could still lead to some concern when we use a large
20 total number that they may not have been anticipating
21 and if they were anticipating that the denominator or
22 the total base population would be smaller is going in
23 the stray facility there, they may be a little
24 disconcerted at the change or adjustment in their claim.
25 I just wanted to avoid coming back on an IRC, when it

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1 comes down to the interpretation of a phrase.

2 CHAIRPERSON PORINI: Okay. Ms. Steinmeier.

3 MS. STEINMEIER: Actually, I had the same
4 concern, that we might be set -- I always want to try to
5 prevent an IRC, and you do too. We all don't want to
6 have to go through that. It's not just the Controller's
7 Office. We have enough of them on the natural, we don't
8 need to be creating them consciously.

9 And I don't know, this is for the county people.
10 Do you already have fairly good census tracking programs
11 currently in place -- or do all counties -- so that this
12 is not going to create another thing that we're going to
13 have to do, to create a really accurate tracking system
14 that will convince the Controller what your total census
15 is, what proportion were euthanized. I'm assuming you

16 have some system in place.

17 MS. DURLAO: Yes, there is a system in place.

18 MR. BALLENGER: Yes, we have a system that would
19 match -- would meet the very generic audit needs. It's
20 not going to be a problem to identify the animals we're
21 interested in.

22 MS. STEINMEIER: Well, that's good to know. So
23 you wouldn't have any problem coming up with the
24 baseline numbers that they need to process your claim
25 and then follow on with those other animals that were

35

1 euthanized.

2 CHAIRPERSON PORINI: Okay. Camille.

3 MS. SHELTON: Also, just a reminder on page 26,
4 the documentation requirement for the submittal of plans
5 includes staff agenda items, staff reports, minutes of
6 the governing board meetings, transcripts of the
7 governing board meetings, certification by the governing
8 board or a declaration from the delegated representative
9 describing the findings and determination and/or a
10 resolution adopted pursuant to the 1999 bill. So they
11 have to prove in their mind that this was the most
12 feasible solution in their particular agency, and it's
13 going to have to be submitted with each claim. And it's
14 not -- before any audit would take place.

15 MS. STEINMEIER: Okay. Thank you.

16 MR. SHERWOOD: Madame Chair.

17 CHAIRPERSON PORINI: Mr. Sherwood.

18 MR. SHERWOOD: Does that really alleviate the
19 problem we have, Shawn? I think what you're saying is
20 that Fresno, in this case, could come to you with a
21 single new facility and say a hundred percent of it was
22 reimbursable because the facility -- and maybe I'm wrong
23 here, okay. I want to make sure that we're clearing
24 this up some way -- rather than using the larger
25 denominator, using a smaller denominator for

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1 reimbursement based on the fact they were using a prior
2 facility that's just for these animals.

3 MR. SILVA: That is our concern. The definition
4 of the word facility leaves room to go either way, and
5 our position would be that it would be based on the -- I
6 was going to propose agency; however, looking at large
7 counties such as Los Angeles, they have several
8 different satellite shelters, and so I think that as
9 long as those shelters were based on essentially
10 servicing a population there, that the -- that it would
11 not be feasible to limit it to them, because there may
12 be -- you couldn't take the whole of the Los Angeles
13 when -- I'm trying to think of one of the names of the
14 satellite facilities -- but if one of the outlying
15 facilities needed to expand because of their own needs
16 and they added a building, it would seem unfair then to

17 pull in the whole of Los Angeles' population to compare
18 their need to grow.

19 Obviously there's other factors such as the
20 ability to shift animals to meet needs, but if that was
21 the ultimate conclusion, you couldn't pull in all of Los
22 Angeles' animal statistics to address the pro rata
23 calculation for an outlying facility. However, many
24 counties have simply a single facility or shelter which
25 may consist of several buildings, and in that case it

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1 would be simple to use all of the county's numbers to
2 calculate any reconstruction or remodeling or new
3 construction. So I'm not sure if I have a nice, neat
4 definition.

5 MR. SHERWOOD: Shawn, under the way it's
6 currently written, how would you feel if Sandra came to
7 you and proved her case, that she had this stand-alone
8 facility and she was going use the smaller denominator?
9 And I'm not even sure, Sandra, if that's what you were
10 thinking, and maybe I should hear from you in a second.

11 But under these guidelines, would you be able to
12 rule that as reimbursable, the entire amount, based on
13 the proper documentation from her that this situation
14 existed?

15 MR. SILVA: Well, again, unfortunately, it comes
16 back to the word "facility" and the fact that it's not a

17 nice, neat definition. Our position would be that it
18 should include the full numbers for that agency,
19 excluding those agencies which have multiple satellite
20 facilities.

21 MR. SHERWOOD: So if we changed it to building,
22 facility and building, would that give her enough
23 support, in your mind -- if we were to do that and
24 wanted to do that, would that give enough support to you
25 to declare that reimbursable?

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1 MR. SILVA: If you said facility and building
2 then we'd have the confusion of --

3 MR. SHERWOOD: Or building, I'm sorry.

4 MR. SILVA: Or building. Then the issue would
5 be is that our choice or according to the claimant? We
6 would prefer that there be a single definition which
7 either states that the facility, which can include a
8 campus or a collection of buildings, or the individual
9 building. We would disagree with going with an
10 individual building, because that is really the fiction
11 for the need for increased space. The increased space
12 is due to the additional three days, not due to any
13 specific population. Obviously, though, in general,
14 strays are euthanized, but the need for an additional
15 three days applies across the board to all animals.
16 Whether owner-relinquished, whether strays, whether
17 picked up by the owners or adopted, it's an additional

18 three across the board, and so we feel that you have to
19 look at that whole population to accurately figure the
20 increased housing needs which are due directly to the
21 mandate.

22 MR. SHERWOOD: Madame Chair, may I ask --

23 CHAIRPERSON PORINI: Yes.

24 MR. SHERWOOD: -- Sandra possibly to comment on
25 that?

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1 MS. DURLAO: Well, I think the problem is we
2 house our strays and he's saying it applies to all the
3 animals across the board. There is no way that we could
4 be totally reimbursed for this facility, not
5 100 percent, because the parameters and guidelines do
6 not allow for 100-percent reimbursement. But what we're
7 saying is because it does allow for reimbursement of
8 stray animals that are ultimate -- abandoned or stray
9 animals that are ultimately euthanized, that is where we
10 are housing our animals. We've kept that number or that
11 group of animals in one facility so that we can look at
12 all the costs involved with these animals very easily
13 and apply them strictly to these animals, and then the
14 pro rata reimbursement for these animals can be applied
15 just to that one building, rather than looking at the
16 whole complex that's not really part of the
17 reimbursement.

18 CHAIRPERSON PORINI: Mr. Kaye.

19 MR. KAYE: Leonard Kaye. I'd like to suggest
20 that, with deference to Fresno, that Fresno is really
21 the exception than the rule, that most programs don't
22 operate that way. But one way, perhaps, you might think
23 of a quick fix, and understanding State Controller's
24 concern too, is the concept that we didn't sit around
25 before the Hayden bill was passed and try and figure out

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1 how to create a death row and how to create certain
2 facilities, I mean. So one way of solving that would
3 fix it in history and make it very clear-cut was to use
4 the terminology replacement building; in other words, if
5 you had a building before that was dedicated in a
6 particular fashion, which I submit Fresno is the
7 exception in that area, then whatever replacement
8 building is required to fix that, that should be the
9 appropriate criteria.

10 CHAIRPERSON PORINI: Camille.

11 MS. SHELTON: I just want to clarify that when
12 we're talking about building and new building, that
13 would fall under No. 1 and not No. 2. You're using
14 those nouns interchangeably, and it's getting to be very
15 confusing. So I need to get -- if changes need to be
16 made, it needs to be clear as to both paragraphs or both
17 sections or if you're talking about one or the other,
18 number one.

19 But in both sections, both whether you're
20 creating a new building or remodeling an existing
21 building, in both sections they require that the agency
22 identify the total population of the stray animal
23 before, stray and abandoned animals before. So whether
24 they house them in one building or in several buildings,
25 it shouldn't make a difference, because that number

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1 still has to be provided to the State Controller.

2 CHAIRPERSON PORINI: All right. Well, it's
3 clear that we're not clear, but I think it's time that
4 we move on. Any other issues, Mr. Silva?

5 MR. SILVA: Yes. We have two additional
6 concerns. We would agree -- under the category of
7 necessary and prompt veterinary care, we would agree
8 with the definition that staff has come up with,
9 although we would disagree with one of the specific
10 findings of what is to be determined in advance as
11 necessary and prompt veterinary care, and that has to do
12 with the vaccinations.

13 In their own submission, in Los Angeles' own
14 submission, the evidence is quite spotty, in fact, may
15 even be contrary to the fact that a vaccine is of any
16 benefit. Referring to Bates page 291, I will read the
17 following section if you don't want to try and dig
18 through and find it. It is a part of the submission by

19 the County of Los Angeles, Department of
20 Auditor-Controller. And this has come up in prehearing
21 conference, but I don't know if it's come up before this
22 Commission itself. I suppose it's worth pointing out
23 again, is that they stated that animals without previous
24 vaccinations are vaccinated for the first time. This
25 vaccine provides little protection during the

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1 impoundment period, which is the period in question as
2 far as reimbursements are concerned.

3 And then further down in that page it's stated,
4 our experience is, A, almost all animals in your pound
5 have not been inoculated, so by their own terms there
6 would be little or no benefit derived during the
7 impoundment periods for these animals to be given from
8 the vaccine.

9 And then we refer back to some evidence,
10 anecdotal evidence, about the specific facilities. They
11 refer to the use of vaccinations, kind of a wellness
12 vaccine, and state that private veterinarians
13 recommended the vaccination. For bordetella, a vaccine
14 is given at both Carson and to some extent the Downey
15 facilities. The same vaccine was used in Lancaster for
16 one and a half years without beneficial effect. So I
17 think the concern from our perspective is that how can
18 some -- how can a procedure be necessary when it's
19 ineffective?

20 Now there may be certain -- we don't believe
21 that we should preclude it across the board, but we
22 don't believe it should be specifically included, that
23 that would be an individual determination based on maybe
24 there's an outbreak and maybe at that point in time it
25 is reasonably necessary to vaccinate, but certainly from

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1 their own experience, most of the animals don't benefit
2 during the holding period because they have not been
3 previously inoculated. At the one facility, they
4 observed no beneficial effect from the vaccine. And I
5 think vaccines are the quintessential preventative
6 medicine, which are appropriate for the adopters or
7 relinquishees, if that's the proper term, for those who
8 take on the animals, to either give them the
9 vaccinations before they're turned over to that person
10 and include that as part of your adoption fee, or to
11 give that person a list of the vaccines which are
12 recommended for the animal. Because they get -- the
13 benefit is long term, it is not during the holding
14 period, if at all.

15 CHAIRPERSON PORINI: Okay. Any other issues?

16 MR. SILVA: One final issue, and I'll keep this
17 one short. Our concern is also with the language used
18 by the staff in addressing Food and Agriculture Code
19 section 30652, which is the provision which talks about

20 licensing fees, and it gives a list of four types of
21 expenses that they should be applied to, in order, first
22 to cover the cost of the licensing program. Then it
23 goes on to basically enforcing, I believe it's
24 division 14, the section which covers the animal
25 shelters.

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1 Our concern is that this is based upon a use of
2 funds or savings, rather than the availability. And I
3 would analogize this to the situation which we're
4 unfortunately very familiar with and that is Graduation
5 Requirements. We did not base the finding that the
6 costs were not reimbursable on the use of this
7 cost-savings method, i.e., that the reduction in
8 nonscience teachers, we based it on the availability.

9 And the concern there is that if you base it on
10 use, that some agencies may be prone to shift the
11 numbers around, shift the dollars to different areas,
12 and simply not utilize those funds and then not have to
13 count them against their reimbursement. We believe that
14 when the funds are available, that they shall be
15 allocated as an offset against the expenses occurred
16 under this test claim.

17 Now, this is obviously not to say that is how
18 they spend their money, we're going to tell them how to
19 do that. That's clearly not our prerogative. But it's
20 a different issue when it comes to bookkeeping and

21 claiming. We believe that to avoid the diversion of
22 these assets away from being defined as an offset, that
23 we should base it, as we did in Graduation Requirements,
24 on the availability of the funds. That would mean
25 anything (a) has been completed would be counted as

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1 offset.

2 And with that, I will close my comments.

3 CHAIRPERSON PORINI: All right. Questions?

4 MS. STEINMEIER: I would have Camille comment,
5 especially on that last item.

6 CHAIRPERSON PORINI: Okay. Do you want to
7 comment now or?

8 MS. SHELTON: Sure, if you would like me to.

9 We have provided a pretty extensive analysis on
10 the fee authority issue, and I believe however you want
11 to phrase it, it would still -- the position of the
12 Controller's Office, I think, is the same as the
13 Department of Finance's. Really we're reading a
14 requirement into the statute that's not there.

15 I don't believe that the Commission has the
16 authority to change a statutory priority of the
17 availability or use of funds. I mean, it clearly -- by
18 the statute they have to use the funds first to pay for
19 the fees of the issuance of dog license tags, and then
20 if there's any available funds after that, they have to

21 pay for the fees, salaries, costs, and expenses for the
22 enforcement of the whole division, which is the division
23 holding dogs.

24 Now, there is no priority established in
25 subdivision (b), and the legislature has, you know, made

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1 it clear that they have chosen not to set that priority
2 in subdivision (b). But what is clear is that they do
3 have to pay -- before they can use that money to pay for
4 subdivision (c) and subdivision (d), they do have to pay
5 for the cost of those programs with regard to dogs, and
6 that would include the care and maintenance of stray and
7 abandoned dogs, the -- if you -- making the animal
8 available for owner redemption, you may need extending
9 your hours. It would also include acquisition of
10 additional space or remodeling additional space. And
11 then all of the one-time activities. All those expenses
12 have to be available or used under subdivision (b)
13 before you can pay or use subdivision (c) or (d). And I
14 don't think we can read a requirement in the statute
15 which is by the plain language not there.

16 CHAIRPERSON PORINI: Okay. Mr. Silva.

17 MR. SILVA: If I could respond very quickly, our
18 attempt is not to interpret Government Code
19 section 30652 as having any specific priority. Just as
20 when we looked at the Education Code section which said
21 that the agency may terminate or adjust their teacher

22 staffing based on changes in curriculum, we weren't
23 attempting to say they had to terminate teachers.
24 That's an application of the statute which we believe is
25 left to the local agency.

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1 The question is really what is an offset and
2 what should be claimed as an offset? And our position
3 is that this is an interpretation of offset, not an
4 interpretation of the statute. And we believe that
5 whenever the savings or the funds are available, that
6 they should be claimed. Just as in Graduation
7 Requirements it was -- the layoff provision was
8 available, not required, and we weren't asserting that,
9 simply available.

10 CHAIRPERSON PORINI: Camille.

11 MS. SHELTON: Well, a couple of things. There's
12 no legal authority to that proposition in any of the
13 Mandates cases.

14 And secondly, the statute in Graduation
15 Requirements is very different than the statute here.
16 Certainly the statute in Graduation Requirements did not
17 set a priority at all and it's couched with the phrase
18 school districts may lay off teachers. In this
19 situation, it's mandatory. They shall use these funds
20 in a specified priority, so I think they're very
21 different examples and can't be confused as the same.

22 CHAIRPERSON PORINI: Okay. Questions from
23 members?

24 MS. WILLIAMS: I have one question.

25 CHAIRPERSON PORINI: Ms. Williams.

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1 MS. WILLIAMS: Talking about the inoculations
2 for the dogs, I notice where it says the vaccines are
3 administered to treatable and adoptable animals, so it
4 wouldn't be across the board. These wellness shots, do
5 they what, bordetella, parvo, distemper, the
6 six-in-ones? What are they? Do you recall?

7 MR. SILVA: I would have to look -- refer to --

8 MS. WILLIAMS: Okay. I was just curious. But I
9 would like to just get on record personally that I think
10 these shots are very important for dogs that are exposed
11 and that are adoptable. Because when they go out of
12 there, they've already been exposed and that might be
13 distemper, parvo, or some other disease.

14 MS. STEINMEIER: Kennels are notorious for that.
15 So what you're doing, even if you don't see it in the
16 holding period, the results are out in the --

17 MS. WILLIAMS: They're in there six days. They
18 go out. They've been exposed. So a distemper or parvo
19 shot might prevent that.

20 CHAIRPERSON PORINI: All right. Mr. Ballenger.

21 MR. BALLENGER: Madame Chairperson, thank you.
22 The shots that are provided to animals as preventive

23 measures probably vary from jurisdiction to
24 jurisdiction. Typically we use distemper, parvovirus,
25 and other very common highly communicable diseases among

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1 dogs. And if we didn't inoculate them, the illness
2 rate, the death rate, would skyrocket.

3 CHAIRPERSON PORINI: Camille.

4 MS. SHELTON: Could I just clarify that the
5 issue for the Commission on that is whether or not you
6 believe the wellness vaccine is reasonably necessary to
7 comply with the mandate to provide prompt and necessary
8 veterinary care.

9 CHAIRPERSON PORINI: Okay. Let's see, Mr. Ross,
10 you're sitting in back. Did you wish to make any
11 comment?

12 MR. ROSS: I didn't know the correct order, but
13 I do have a comment to make, if that's all right, or
14 after Finance states, whatever is appropriate for the
15 Commission.

16 CHAIRPERSON PORINI: Go ahead, please.

17 MR. ROSS: Madame Chair and Members of the
18 Commission, my name is Michael Ross. I'm the animal
19 services director for Contra Costa County. The animal
20 services department there provides animal control
21 services to approximately 850,000 people living in 18
22 cities, plus the unincorporated area of the county. I'm

23 also speaking on behalf of California Animal Control
24 Directors Association. The association represents the
25 animal control directors of approximately 311 agencies.

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1 We would first like to commend the staff of the
2 Commission for their diligence and hard work on this
3 test claim. While we have disagreed with some of
4 staff's positions, we appreciate the professionalism and
5 courtesy shown in addressing our concerns. We believe
6 that the staff recommendation is a compromise that we
7 can reluctantly support.

8 However, we do have a certain concern and
9 comment involving the rule of unintended consequences.
10 One of the stated aims of the legislation is attended to
11 by adding this language to the Civil Code in section
12 1834.4(a): "It is the policy of the State that no
13 adoptable animal should be euthanized if it can be
14 adopted into a suitable home." Section (b) states: "It
15 is the policy of the State that no treatable animal
16 should be euthanized." Staff recommendations relative
17 to reimbursable activities in section 4(b)(3) states in
18 part that reimbursement for the care and maintenance of
19 impounded stray or abandoned dogs and cats is limited to
20 dogs and cats that die during the increased holding
21 period or are ultimately euthanized.

22 It has been stated that agencies can charge more
23 for adoption and pass on costs to owners redeeming their

24 animals. While this is true in theory, however, to do
25 so to the extent necessary to recoup new costs imposed

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1 by this legislation would increase the costs of adoption
2 and redemption to an exorbitant level. This would be
3 detrimental to the State's stated goal of ending the
4 euthanasia of adoptable and treatable animals.

5 We believe the increased costs associated with
6 the care and treatment of all animals incurred as a
7 result of the legislation should have been determined to
8 be reimbursable. This interpretation would take into
9 account the stated intent of the legislation and would
10 foster a state, county, city, and nonprofit partnership
11 to end the euthanasia of adoptable companion animals in
12 our state as the legislation stated as its primary goal.

13 Thank you.

14 CHAIRPERSON PORINI: All right. Questions?

15 MS. STEINMEIER: I have one. What would be your
16 specific recommendation to change the staff analysis
17 that would incorporate that idea?

18 MR. ROSS: To eliminate the requirement that the
19 animal die or be euthanized. We have to provide care to
20 all of the animals in our custody, and to say that
21 reimbursement is only attributable to animals that die
22 or are euthanized does not take into account the fact
23 that you cannot increase adoption fees or return to

24 owner fees to an extent that could possibly offset the
25 cost of the legislation. To do so would mean less

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1 animals would be adopted and fewer animals would be
2 returned to their owners.

3 MS. STEINMEIER: The only fallacy I see with
4 that is if an animal is so ill that it is going to be
5 euthanized because of that illness, that that is not the
6 intent of the legislation. It's adoptable animals.

7 MR. ROSS: That's correct, ma'am.

8 MS. STEINMEIER: And so adoptable animals that
9 are ultimately euthanized I would agree with you on, but
10 that means this is excess population we've not been able
11 to place and therefore had to euthanize because of
12 space. That's the only narrow thing I would agree with
13 you on in philosophy, except I want Camille to talk
14 about how that relates to the actual legislation.

15 MR. ROSS: And I understand your point and I do
16 agree with you.

17 CHAIRPERSON PORINI: Camille.

18 MS. SHELTON: These issues addressed by the
19 Commission at the test claim phase, and these proposals
20 would be inconsistent with the statement of decision,
21 and the Commission doesn't have jurisdiction on the
22 statement of decision anymore.

23 MS. STEINMEIER: That's true.

24 MS. SHELTON: We're in Ps and Gs, so.

25 CHAIRPERSON PORINI: All right. Department of

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1 Finance.

2 MS. GEANACOU: Yes. Good morning, Madame Chair,
3 Members of the Commission. I reiterate the comments of
4 prior commenters about appreciating the staff and
5 Commission's continued energy in applying themselves to
6 this issue.

7 CHAIRPERSON PORINI: Your name for the record?

8 MS. GEANACOU: Oh, yes, excuse me, Susan
9 Geanacou, Department of Finance.

10 I have a couple of points which I will attempt
11 to keep brief. The first is the issue of reimbursement
12 for animals that die during the increased holding period
13 as opposed to are euthanized. The Commission's staff
14 acknowledges on the top of page 7 in its staff analysis
15 that the statement of decision does not specifically
16 address animals that die during the increased holding
17 period, but states rather that such request is
18 consistent with the statement of decision. Finance is
19 concerned, given that we're now at the Ps and Gs stage,
20 that the Ps and Gs must reflect that which was actually
21 decided by the Commission and that which is reflected in
22 the statement of decision, not activities which may be
23 consistent with the statement of decision, but is not
24 reflected therein.

25 I will note that parties had no opportunity to

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1 address issue at the test claim phase because it was not
2 claimed as a reimbursable activity, and therefore it was
3 not considered by the Commission.

4 Lastly and perhaps most importantly on this
5 issue, Finance is concerned that by including animals
6 that die during the extended holding period, the
7 Commission would be establishing a harmful precedent by
8 expanding reimbursable activities at the Ps and Gs phase
9 that were not determined to be such in their statement
10 of decision.

11 Secondly addressing offsetting savings and other
12 reimbursements in the staff analysis, I'd like to
13 address fees collected for dogs licenses, tags and
14 fines. Finance submitted its position on this issue on
15 October 11th, and we continue to disagree with staff's
16 rejection of our October 11th proposal that all fees for
17 the issuance of dog license -- excuse me, tags and fines
18 collected be applied first to mandated activities before
19 they're applied to nonmandated activities. We believe
20 that counties have the authority to raise dog license
21 fees and also adoption fees and should use that
22 authority to offset more of the mandated costs before
23 claiming reimbursement.

24 Lastly, we also included in our October 11th
25 filing some proposed language that would specifically

1 require affirmatively identifying offsetting savings,
2 and we believe that the boilerplate language as asserted
3 by staff does not address our concerns in this area, and
4 we believe that specific nonexhaustive perhaps examples
5 or criteria for affirmatively identifying offsetting
6 savings should be included in the Ps and Gs to assist
7 counties in filing their reimbursement claims,
8 particularly because of the much debated cost neutral or
9 even cost savings aspects of this legislation.

10 CHAIRPERSON PORINI: Camille, did you have any
11 other comments?

12 MS. SHELTON: Do you want me to address any of
13 those issues?

14 MS. STEINMEIER: There are two issues that I
15 heard her talk about. One of them was the animals who
16 die during the holding period, and other one is the
17 offsets due to the ability of counties to theoretically
18 raise their fees and license fees high enough to pay for
19 it.

20 MS. SHELTON: Let me talk about the later one
21 first. They do have the ability to set their fee. One
22 thing that was discussed, though, in that whole division
23 of the dogs, we're talking about mandated versus
24 nonmandated activities. Those activities, a lot of
25 those activities for the enforcement of that division,

1 in that division, were enacted before 1975, but they
2 still are required. Those are required activities. So
3 while they may not be reimbursable, they are still
4 required to perform those activities. And so I don't
5 believe that that would change the recommendation,
6 because the recommendation is based on a legal analysis
7 of the statute. And again, as I mentioned earlier,
8 there's no legal authority to require the identification
9 of the offset for a mandated activity first before other
10 required activities. There's just no law on that.

11 MS. STEINMEIER: We did talk about that during
12 the statement of decision phase, I recall, and we came
13 to that same conclusion. It may not be part of the
14 statement of decision, but it was a part of the
15 discussion.

16 MS. SHELTON: We talked -- well, we talked about
17 that in reference to denying reimbursable for animals
18 that are adopted or relinquished by the owner, that's
19 correct, the fee authority, and found -- the Commission
20 found in that respect that the fee authority was
21 sufficient to cover the entire cost of those animals.

22 With regard to the animals that die, that was a
23 tough issue. I do believe that it would not be
24 legally -- it would not be a legal error to include that
25 in the Ps and Gs today since you would not be changing

1 any of the conclusions in the statement of decision.

2 I -- Ms. Geanacou has raised some good concerns, but if
3 you choose to go that way, that would be correct too.

4 CHAIRPERSON PORINI: Okay. Any questions?

5 MR. STARKEY: Madame Chairman, if I could also
6 interject --

7 CHAIRPERSON PORINI: Yes.

8 MR. STARKEY: -- I do think on the analysis that
9 it does -- not only is it consistent with the decision,
10 but I think the legal argument could be made that it
11 flows from the decision. A decision on the test claim
12 in many cases can't answer every conceivable possibility
13 that might arise, and I think the statute establishes
14 the parameters and guidelines for that very purpose, and
15 so when they present that issue, I think the legal
16 analysis that flows from that should flow from that
17 decision.

18 CHAIRPERSON PORINI: Okay. I think for us
19 sitting up here, it's unfortunate that the Contra Costa
20 County raised an issue that was not specifically
21 discussed in the statement of decision and Camille gave
22 the answer that she did, and now we have a similar
23 situation, and we're saying, well, it would kind of be
24 okay. In my mind that's inconsistent on our behalf.

25 Okay. Anything -- any other questions from

1 members?

2 MS. STEINMEIER: Move the staff recommendation.

3 MR. LAZAR: Second.

4 MS. STEINMEIER: Or do we have more testimony?

5 CHAIRPERSON PORINI: Actually, I think we do

6 have more testimony --

7 MS. STEINMEIER: Then that was premature, I'm

8 sorry.

9 CHAIRPERSON PORINI: -- from interested parties.

10 So if we could make space here.

11 Before we begin, just for the record I would

12 indicate that Mr. Harrigan has been called away from the

13 hearing for a family emergency and will not return.

14 So, all right, please state your name for the

15 record and be sure that if you have a business card you

16 give it to the court reporter.

17 MS. HANDLEY: Hello. My name is Virginia

18 Handley with the Fund for Animals.

19 I've certainly been following this issue for

20 several years, and as Director Mike Ross mentioned, the

21 unintended consequences of this legislation is just

22 overwhelming. And in fact, I think it's one of the most

23 tragic pieces of legislation that has passed through

24 this building that has affected animals. I don't think

25 our appropriation committees did their job at all not to

1 listen to the shelters who told them that this bill was
2 going to cost millions of dollars, and when you take
3 into account the amount of effort that this board has
4 put into it, and the staff has just been tremendous, and
5 to add that onto the cost of this is tragic.

6 I do support the latest amendment that you put
7 in about including the animals who die while they are at
8 the shelter. They certainly should be part of this. I
9 do believe that, as has been stated before, the
10 decision's much too narrow of limiting this just to
11 strays who are euthanized. There are no offsetting
12 savings that are relevant enough to eliminate the
13 tremendous amount of cost, whether the animals are
14 adopted or not.

15 Particularly tragic is the decision not to
16 include the owner-surrendered animals. I believe this
17 decision will cost the cities and counties and the
18 private shelters, too, will cost them a lot more money
19 in the long run, particularly the city and county
20 shelters and humane societies with contracts.

21 In fact, this legislation really has resulted in
22 a lot of humane societies literally dumping their animal
23 control contracts because they do not want to operate
24 under these mandates, and therefore they drop their
25 contracts. It then goes back to the city and county

1 governments to agencies like the sheriff's department,
2 the agriculture department, police departments, those
3 very agencies who do not want this job who now have it
4 forced upon them and who do not have the same priorities
5 in many instances that humane societies would have who
6 have these contracts.

7 And July 1st, 2002, this year, the SB 1785
8 mandated a raise in the holding period for
9 owner-surrendered animals. There is a bill in right
10 now, SB 1931, to remove that raise. It's an urgency
11 bill. I don't know whether this bill will pass, but we
12 see a bad situation becoming much worse. What has
13 already happened is that animals are being turned away
14 from the shelters because of the overcrowding.

15 What happens to these animals that are turned
16 away? Many times, most often they come back in as
17 strays. That same person can bring them right back in,
18 put them in the night deposit box, have somebody else
19 bring them in. They are then brought in as strays.
20 Then they have to be held for this mandated holding
21 time, sitting there for days, crowding the shelters,
22 being exposed to disease, and they can't be adopted
23 during that time. They also come in with no information
24 as to their temperament, their health, their
25 vaccinations, their name, no information that would help

1 with their adoptions. And then because the place is so
2 crowded, as soon as that one day of adoption that's
3 mandated, as soon as that one day is up, then they are
4 put down. We end up we are killing more adoptable
5 animals than we ever did before.

6 I did a survey of the shelters and found that to
7 be true. They were all increased, and the amount of
8 euthanasia, the amount of overcrowding, the amount of
9 disease, all has gone up.

10 CHAIRPERSON PORINI: Ms. Handley, may I ask, do
11 you have a specific position on the parameters and
12 guidelines that are before us today?

13 MS. HANDLEY: I can give some more statements on
14 those.

15 CHAIRPERSON PORINI: If you could keep it to
16 that, because we did have extensive testimony, and I
17 know you testified at our original test claim hearing,
18 so we're trying to focus just on the parameters and
19 guidelines before us.

20 MS. HANDLEY: Concerning the vaccines, the
21 vaccinations, those are very, very necessary. By the
22 time the animal gets adopted, and in many cases they've
23 already been there at least a week, some that are held
24 longer -- if they have room, that are held longer, by
25 the time the animal becomes adopted, it is way too late,

1 those animals, and this is happening more and more
2 because of the amount of overcrowding caused by this
3 law, that the disease rate has gone up dramatically in
4 the shelters, therefore the need for these vaccinations
5 are even greater than they have been before. If they go
6 home, and many do, they go home, they have already been
7 exposed to the distemper and parvo. It's too late to
8 give it to them at that time. It is needed on arrival.

9 And another issue that was brought up, this idea
10 that it's to be offset by license fees is just totally
11 unrealistic. It's not offset now with the budgets that
12 these shelters have. License fees in no way can pay for
13 what they have to do already. I find many of them well
14 over their budgets into the millions of dollars.
15 Already no way can the license fee pay for what they're
16 doing now.

17 To claim, well, you should raise up the adoption
18 fees, well, those adoption fees are getting higher and
19 higher now trying to offset. They just take themselves
20 right out of business. We also have requirement for the
21 spaying and neutering, so that's added onto the cost of
22 adoptions already. We also have a state law that
23 mandates a half price license fee for spayed and
24 neutered animals, so we have a mandate to give people
25 advantages for spaying and neutering. So to raise up

1 those fees, to penalize the public for this, is not fair

2 and not realistic.

3 Also, the owner-surrender fees that are all
4 going up and they go up so high, trying to offset some
5 of these costs, what ends up, of course, is that's how
6 the animals then come back in as strays because people
7 don't want to pay these horrendous owner-surrender fees.
8 So those cannot offset that.

9 And just in closing, it is just tragic that the
10 way this has turned out, that the incentive financially
11 is going to be to kill more animals, to take them in as
12 strays instead of owner-surrendered animals, to charge
13 rescue groups for animals that they come in to take,
14 which they should be given to those rescue groups for
15 free because heaven knows they don't have the finances
16 and they shouldn't be penalized for this. Charging the
17 higher adoption fees and redemption fees, it all
18 backlashes onto the animals, and the animals are the
19 ones that have been the losers in this whole
20 transaction.

21 CHAIRPERSON PORINI: All right. Thank you.

22 Questions from members? All right.

23 Let's try to wrap it up. Mr. Lutzenberger.

24 MR. LUTZENBERGER: Just a point of
25 clarification. Again we reiterate that local

1 governments, in this case, we believe do have the

2 authority to raise the fees in a manner that is
3 sufficient to cover the costs. Granted it is a question
4 of what the market will bear, but I can state for the
5 record that when I adopted my stray cat from Sacramento
6 pound, I was quite willing to pay the \$125 that covered
7 the direct costs and the administration costs for that
8 cat. So let's put it into context, if there's no
9 quantification that's going to be provided.

10 CHAIRPERSON PORINI: Okay. Mr. Kaye, did you
11 have any additional comment?

12 MR. KAYE: No, I would merely ask whether the
13 animal was spayed or neutered and whether it was really
14 a \$250 fee.

15 MR. LUTZENBERGER: The fee was the direct charge
16 that was explained by the pound of what were the
17 veterinary services for that particular animal. And it
18 included the spaying and neutering, it including the
19 shots, and it included the administrative costs of
20 holding the animal.

21 MR. KAYE: Okay.

22 CHAIRPERSON PORINI: Okay. Any further
23 questions?

24 MS. STEINMEIER: I would like to move the full
25 staff recommendation on the Ps and Gs, to adopt the Ps

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1 and Gs as presented to us today.

2 CHAIRPERSON PORINI: All right. We have a

3 motion.

4 MR. LAZAR: Second.

5 CHAIRPERSON PORINI: And we have a second.

6 Discussion?

7 I guess I'd like to say just for the record I

8 am -- I would support that motion if the reference to

9 animals that die is removed. I'm very concerned about

10 the testimony that we had earlier and the statement of

11 decision.

12 Okay. Any further discussion?

13 Roll call.

14 MS. HIGASHI: Mr. Lazar.

15 MR. LAZAR: Aye.

16 MS. HIGASHI: Mr. Sherwood.

17 MR. SHERWOOD: Aye.

18 MS. HIGASHI: Ms. Steinmeier.

19 MS. STEINMEIER: Aye.

20 MS. HIGASHI: Ms. Williams.

21 MS. WILLIAMS: Aye.

22 MS. HIGASHI: Ms. Porini.

23 CHAIRPERSON PORINI: No.

24 MS. HIGASHI: Motion carries.

25 CHAIRPERSON PORINI: Okay.

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1 MR. KAYE: Thank you very much.

2 MS. HIGASHI: May I suggest we take a

3 five-minute break?

4 CHAIRPERSON PORINI: Yes. That's great idea.

5 (Recess taken)

6 CHAIRPERSON PORINI: I see the members are back,
7 so if folks could take their seats, please. If folk
8 would take their seats, please, we'll be going to our
9 next item.

10 MS. HIGASHI: The next item is item 5, adoption
11 of proposed parameters and guidelines Photographic
12 Record of Evidence. Staff counsel Eric Feller will
13 present this item.

14 MR. FELLER: Good morning. Before you are the
15 proposed parameters and guidelines for the Photographic
16 Record of Evidence test claim. The test claim
17 legislation requires exhibits in a criminal trial to be
18 returned to a party when a court determines they pose a
19 security, storage, or safety problem, and that
20 photographic record of these exhibits be substituted.
21 It also requires exhibits toxic by nature or pose a
22 health hazard to humans be introduced to the court in
23 the form of photographic record or written and certified
24 chemical analysis, unless it causes a departure from
25 procedure.

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1 Staff has made several modifications to the
2 claimant's proposed parameters and guidelines to conform
3 to the Commission's statement of decision, previously

4 adopted parameters and guidelines in the statute. One
5 such modification is that only those photographs
6 actually admitted into evidence be reimbursed. The
7 other issues on this test claim revolve around
8 reimbursement for transporting photographs, whether the
9 provision for certified chemical analysis expressly
10 exclude controlled substances if the exhibit is toxic,
11 and the reimbursement for evidence disposal.

12 Now, in speaking with claimant yesterday and
13 this morning, they requested to keep the language under
14 5(b), indirect cost rates, as they submitted it. So
15 that's on page 15 and 16. All the strikeout text on
16 page 16 would be reinserted and the underscored text
17 would be taken out, except for the underscored text for
18 school districts under (b)(1), which is a two -- also on
19 page 15 and 16, would remain in, since school districts
20 are potentially eligible claimants.

21 So with that change, staff recommends the
22 Commission adopt the parameters and guidelines as
23 modified, beginning on page 11.

24 CHAIRPERSON PORINI: Mr. Sherwood.

25 MR. SHERWOOD: I just want to -- is that your

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1 recommendation?

2 MR. FELLER: Yes. Yeah, we -- I would recommend
3 that, that change as well.

4 CHAIRPERSON PORINI: Okay. So staff concurs
5 with the recommendation of claimants.
6 MR. FELLER: Correct.
7 CHAIRPERSON PORINI: Okay.
8 MR. FELLER: Would the parties and witnesses
9 state their names for the record, please.
10 MR. JOHNSON: Steve Johnson, assistant
11 laboratory director of the Los Angeles Police Department
12 crime lab.
13 MS. STONE: Pam Stone on behalf of the LAPD.
14 MR. PAULIN: Matt Paulin, Department of Finance.
15 MR. SILVA: Shawn Silva, State Controller's
16 Office.
17 CHAIRPERSON PORINI: Okay. Ms. Stone, would you
18 like to begin?
19 MS. STONE: Yes, please. Thank you, Madame
20 Chairman, Members of the Commission.
21 First of all, we would like to thank the
22 Commission staff for the work on this particular
23 mandate. The reason for the return to the original ICRP
24 language is because the ICRP language substituted by
25 staff is presently under negotiation as part of the

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1 boilerplate review and it was premature, so if that
2 explains it. This is the ICRP language that was agreed
3 to with State Controller's Office sometime early last
4 year.

5 With me is Mr. Johnson, who has some comments
6 regarding two portions of the parameters and guidelines
7 to which we object.

8 Mr. Johnson.

9 MR. JOHNSON: Good morning.

10 CHAIRPERSON PORINI: Good morning.

11 MR. JOHNSON: The first area I'd like to address
12 is the staff recommendation to reimburse for only
13 photographs that are introduced into court. This change
14 would pose serious operational problems for us.
15 Essentially the Superior Court in Los Angeles has
16 indicated to us that they will not accept any narcotics
17 exhibits, any hazardous exhibits in the court and are
18 requiring the submission of photographs in a particular
19 format instead of the evidence being introduced.

20 If I were to try to wait until the last minute
21 to take photographs because I can't get reimbursement
22 for them because they might not be introduced, I would
23 have to essentially wait until the case was already at
24 the preliminary hearing stage or already starting the
25 preliminary hearing and then tell the bench officer, a

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1 superior court judge, wait, I've got to send someone
2 back to take a picture of the evidence, which is going
3 to be very labor intensive. I'm going to have to handle
4 the evidence twice. I'm going to have to retrieve the

5 packages out of our storage vaults, reopen the package,
6 take photographs, and then give them to an officer to
7 take them back to court. It might also incur the wrath
8 of the superior court judge. I try to avoid that. They
9 often can put you in jail for contempt, and I try to
10 avoid that at all costs.

11 So essentially the laboratories in Los Angeles,
12 both the county and the city laboratory image or take
13 photographs of the evidence as it comes through the
14 laboratory at the beginning of the process. The Los
15 Angeles District Attorney's Office doesn't file cases
16 until they're analyzed. They don't want to file a case
17 for possession of a narcotic when no one has said, yes,
18 it's a narcotic, and I agree with that.

19 While we have the package open in the laboratory
20 and we have everything out, we then simply take it over
21 and photograph it. It only takes about ten minutes per
22 case. We then return the evidence to the property room,
23 and there it stays, and the photographs are already
24 taken and available for the courts, if they so desire.

25 We can't determine up front which cases are

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1 going to go eventually to trial, which ones are going to
2 be settled at the arraignment or at the preliminary
3 hearing. We could have an example of an officer who
4 gets the photographs, goes to the preliminary hearing,
5 is standing there waiting to start the preliminary

6 hearing, and the defense will change their mind and
7 decide to plea, and therefore I would not -- we would
8 not be compensated for those photographs. But if the
9 person actually goes in and gets on the witness stand
10 and they're introduced, now I do get compensated. It
11 seems a little hard to decipher the difference between
12 those scenarios, as far as our agency is concerned.

13 And so we believe it would be more labor cost --
14 cost more in terms of labor to handle the evidence
15 twice, to photograph it. It would inject some
16 significant operational problems in our operation, as
17 well as the sheriff's office down the road, and is
18 unnecessary.

19 The second area is in the area of disposal. And
20 I understand in reading this that that may be beyond the
21 decision that was made earlier on this test claim, but
22 just to reiterate, historically when a narcotics case
23 went to court, we took the narcotics to court. It was
24 introduced as evidence. The court clerk took custody of
25 the evidence. The court clerk stored the evidence. And

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1 when the case was finally adjudicated or had reached
2 past the first level of appeal, the court disposed of it
3 at court expense. Now the court never sees the
4 evidence. It stays in my storage vault, and I get to
5 pay to get rid of it when the case is finally

6 adjudicated.

7 And those are the only two areas I'd like to
8 comment on.

9 CHAIRPERSON PORINI: All right. Questions?
10 Ms. Steinmeier.

11 MS. STEINMEIER: I have one on the issue of
12 narcotics. Are you -- did I understand you to say that
13 the court considers all narcotics to be hazardous, or do
14 they differentiate between heavy-duty narcotics or
15 lightweight narcotics?

16 MR. JOHNSON: They are unwilling to accept --

17 MS. STEINMEIER: Any.

18 MR. JOHNSON: -- any narcotics.

19 MS. STEINMEIER: They don't want them in their
20 court.

21 MR. JOHNSON: They want no -- no narcotics, no
22 evidence samples from illicit drug labs. Those are all
23 basically precluded from being brought into court.

24 MS. STEINMEIER: Because they're hazardous, in
25 their mind?

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1 MR. JOHNSON: Because the court decided that
2 they were hazardous. They were posing security and
3 storage problems --

4 MS. STEINMEIER: Right.

5 MR. JOHNSON: -- for the court, and they
6 basically decided that it would be a better idea for us

7 to have that problem rather than for them to have that
8 problem.

9 MS. STEINMEIER: I can understand that. So they
10 shifted it to you essentially.

11 MR. JOHNSON: Yes.

12 MS. STONE: Madame -- Ms. Steinmeier, we do
13 have, if the Commission so desires, copies of the list
14 of partial -- a portion of the list of the chemicals
15 that are named to be hazardous and cause reproductive
16 toxicity issued January 25th of 2002. And, for example,
17 we just have two pages, it includes --

18 CHAIRPERSON PORINI: Who issued --

19 MS. STONE: -- cocaine.

20 CHAIRPERSON PORINI: Who issued the --

21 MS. STONE: This is issued by the State of
22 California Environmental Protection Agency, Office of
23 Environmental Health Hazard Assessment, issued on
24 January 25th, 2002.

25 CHAIRPERSON PORINI: Okay. Any other questions?

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1 MS. STEINMEIER: I guess we should have
2 Mr. Feller comment on both the disposal issue and the
3 hazardous issue.

4 MR. FELLER: As far as whether cocaine, you
5 know, is hazardous or not, the court doesn't have to
6 ever get that under the statute, because under

7 1417.3(a), anything the court determines is a security,
8 storage, or safety problem, the court clerk can
9 recommend be introduced in the form of a photograph. It
10 doesn't have to be cocaine. It can be a couch. It can
11 be anything. So either way, the courts are going to
12 have to get photographs of those items rather than the
13 actual exhibits themselves.

14 The -- as far as the disposal issue goes, the
15 statute doesn't provide for the statement of decision,
16 doesn't provide for -- the staff just finds that it's
17 way beyond anything that was -- had been previously
18 decided or legislated in this case.

19 CHAIRPERSON PORINI: All right. Department of
20 Finance?

21 MR. PAULIN: We're in basic agreement with the
22 staff's analysis. Our main issue was the disposal and
23 that has been -- that is proposed to be removed from the
24 Ps and Gs, so we're in agreement.

25 CHAIRPERSON PORINI: All right. Controller's

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1 Office.

2 MR. SILVA: We are also in agreement with the
3 staff's position on the disposal issue and have no
4 problem with the change in the boilerplate.

5 CHAIRPERSON PORINI: All right. And the
6 boilerplate issue is to be decided in the future.

7 MS. HIGASHI: In the future, that's correct.

8 CHAIRPERSON PORINI: Any further questions from
9 members?

10 MS. STEINMEIER: I guess I'd like to discuss
11 this business of photographic evidence of hazardous
12 materials. In the staff analysis, it really kind of
13 precludes, well, two things. It is never entered into
14 evidence, which the gentleman from Los Angeles Police
15 Department was talking about. That one, I think, is
16 going to be real difficult for us to get a handle on.
17 If they decide it's cost-effective to photograph it all,
18 then probably they're going to have to also take the
19 chance it may or may not be entered into evidence. I
20 don't have a problem with that one. That's an
21 administrative decision on the part of the police
22 department, to do it all because it's cost-effective.
23 And some of it may not be refundable, but you can need
24 to do what you're doing or not. I think you probably
25 would, regardless of the mandate, in light of what you

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1 just said.

2 But on the hazardous materials portion, I don't
3 know. I guess we have to look at the language here and
4 see if that would cover anything that the court
5 determines hazardous, including, I don't know, a tiny
6 amount of marijuana or something. If they don't want
7 that material in their building, then they're really

8 effectively making it a mandate that they have to have a
9 chemical analysis done. And I don't think Mr. Feller's
10 recommendation would include that. Am I incorrect?

11 CHAIRPERSON PORINI: Mr. Feller, do you want to
12 comment?

13 MS. STEINMEIER: Do we need to change this?

14 MR. FELLER: The -- yeah, the recommendation is
15 that the reimbursement for a certified chemical, written
16 chemical analysis, not include controlled substances as
17 defined in Health and Safety Code 11054 unless that
18 exhibit is toxic and poses a health hazard to humans.
19 And I'm not aware that all controlled substances meet
20 that definition.

21 MS. STEINMEIER: So that could be a problem then
22 for Mr. Johnson and for counties and cities and any
23 police agency to have to prove that then to the
24 Controller's Office? Is that what we -- under this
25 recommendation you would have to prove that it was a

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1 hazardous material in order to get reimbursed? Is that
2 what we're saying? Is that --

3 MR. FELLER: Correct.

4 MS. STEINMEIER: -- going to be difficult for
5 them do? No?

6 CHAIRPERSON PORINI: Controller's Office?
7 Ms. Stone.

8 MS. STONE: Madame -- Ms. Steinmeier, there are

9 a number of code sections, regulations, that specify
10 what constitutes a hazardous substance, and so you just
11 ascertain whether or not what you analyzed is on one of
12 these lists, and the list is provided in the parameters
13 and guidelines.

14 MS. STEINMEIER: So you could live with this
15 language?

16 MS. STONE: Oh, yeah.

17 MS. STEINMEIER: Okay.

18 CHAIRPERSON PORINI: Okay. Further questions?

19 MR. LAZAR: Do you have something?

20 MR. JOHNSON: Well, I kind of -- I have to say I
21 agree with Mr. Feller, and I know it's hard for you to
22 believe that, but in this case we had to analyze
23 narcotics. We've always had to analyze narcotics and
24 provide written reports. That requirement is nothing
25 new to us. We have to do that for the enforcement end

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1 of this, and so not being reimbursed for producing that
2 report is -- I mean, that's the cost of our doing
3 business as a law enforcement agency and as a law
4 enforcement laboratory.

5 In response to your comment about that's an
6 administrative decision we make. I don't take pictures
7 of narcotics because I want to take pictures of
8 narcotics. I take pictures of narcotics because the

9 courts have said you can't bring it here and you have to
10 bring a picture. And that the problem is how do you do
11 that without a catastrophic change in the way you do
12 business?

13 And the way that the staff has recommended that
14 we only receive compensation for those that actually get
15 in to court is -- will be difficult for our agency to
16 track and to actually be able to provide the kind of
17 information that the Controller is going to want as to
18 which cases actually went to court. We're talking about
19 a monumental task.

20 Essentially we are moving toward a situation
21 where we image the -- we don't print any pictures. We
22 just image the -- we have a digital image sitting on a
23 server somewhere and only print the pictures out when
24 they're necessary and so that essentially the only cost
25 could be for the short period of time necessary to image

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1 and then, if necessary, when it is needed for court, the
2 officer could retrieve and print those and take them to
3 court.

4 That's my only comment.

5 CHAIRPERSON PORINI: Ms. Stone.

6 MS. STONE: Yes. In going along that line, what
7 we're concerned about is the amount of tracking that
8 would be necessary to determine of all of the images of
9 narcotics made, which ones of those actually went to

10 court and were admitted into evidence versus all the
11 digital images made.

12 In discussions of this with other members of the
13 CSAC SB 90 committee, we were talking about the fact
14 that in smaller jurisdictions this might not be a
15 problem, where you basically have a relatively small
16 jurisdiction, everything is quite local. You know that
17 Joanie Jones' cocaine case is going to go to court, so
18 it's time to get pictures taken and take them to court.

19 However, when you're dealing with such a volume
20 of scale, obviously since Los Angeles has instituted a
21 digital system, you're only going to be using the actual
22 printing paper, for example, when something actually is
23 going to court, and it is much cheaper to reimburse the
24 cost of originally digitally -- digitally imaging the
25 narcotics than it would be to institute something that

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1 is less cost-effective or instituting a tracking system
2 to try to figure out which cases actually went to court
3 and went to prelim versus those that charges were not
4 filed or a plea was entered prior to the moment that the
5 officer got on the stand to admit the evidence.

6 So I think you'd find a substantial difference
7 between jurisdictions, between the larger ones and the
8 smaller ones.

9 CHAIRPERSON PORINI: Controller's Office.

10 MR. SILVA: Yes. I'd like to address two
11 issues. One is the recently discussed tracking issue of
12 coming up with the records to demonstrate which photos
13 were or were not introduced into evidence. And the
14 difficulty of filing a claim does not create -- does not
15 change the reimbursable of the activities. Although
16 it -- granted, it could become somewhat difficult.

17 I think the simplest approach is that in every
18 case in which you go to trial, the clerk of the court
19 generates an evidence list, and you would simply -- the
20 DA present would simply take the evidence list and
21 forward it to the agency responsible for that evidence,
22 and that would be their -- right there would be evidence
23 of what was introduced into court. No better source
24 document would exist as to what was introduced into
25 court and what was reimbursable. Granted, in a large

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1 county there's going to be a lot of those documents, but
2 there is a singular document which would contain that
3 information and would be very reliable. It's produced
4 by the clerk of the court.

5 One other concern that we have that has arisen
6 during the discussion is when the court chooses to
7 determine something or to deem something hazardous and
8 therefore exclude it from the courtroom, we would have a
9 concern with the fact that a court -- the court decides
10 to deem it hazardous and that it is not specifically

11 statutorily deemed hazardous.

12 Certainly if the legislature has deemed it
13 hazardous in one fashion or another, it's -- it would be
14 easily determined to be a state mandate. But when a
15 court exercises its judicial discretion to determine
16 that a specific piece of evidence is hazardous and thus
17 cannot be presented into court -- and I'm not sure how
18 we can convert the judicial discretion into a state
19 mandate. Therefore, we would prefer to find some method
20 to keep it to something that has already been
21 determined, either directly by the legislature, in
22 preexisting statute, or indirectly by the legislature,
23 perhaps something like Cal-OSHA, some -- some regulation
24 or statute that is put out by the State, rather than as
25 an exercise of judicial discretion by an individual

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1 judge.

2 CHAIRPERSON PORINI: All right. Staff and then
3 Mr. Johnson, I think, wanted to say something. No?
4 Okay. All right. Staff.

5 MR. FELLER: The statute has just -- the second
6 part of what Silva said, the statute has two parts.
7 Only the second part deals with exhibits toxic in
8 nature. The first part of the statute deals with
9 exhibits that pose a security, storage, or safety
10 problem as recommended by the clerk of the court. So

11 any of those exhibits, it's whatever the court decides
12 it doesn't want to see admitted into evidence directly,
13 and that's -- that discretion was granted by the
14 legislature.

15 CHAIRPERSON PORINI: Okay. Further questions
16 from members?

17 MS. STEINMEIER: I have one other. What about
18 the court's list of evidence, Mr. Johnson, would that be
19 an adequate -- is that something that you actually have
20 the ability to send to the Controller as a part of your
21 claiming package? What's the practical effect?

22 MR. JOHNSON: Getting the superior court to do
23 anything is problematic and difficult at best. We -- to
24 use an analogy, we have another reimbursement program in
25 terms of narcotics analysis to compensate the city for

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1 the cost of running tests. Moneys are collected from
2 convicted individuals to compensate, and the county
3 takes off a 20-percent administrative fee, and we still
4 can't figure out where any of the money is coming from
5 and how to account for any of it, and the only
6 individuals that have control of those documents are the
7 county. And it's tough for a local municipal agency to
8 try to force the county to make changes like that. They
9 are just not real receptive to what our needs are.
10 Trying to get each court clerk to somehow produce a --
11 at the time the officer is still there in the

12 courtroom -- an exhibit list and somehow try to funnel
13 those to a central repository in an agency of 9,000
14 officers would be virtually impossible.

15 MS. STEINMEIER: Then what other -- I'm talking
16 to Mr. Silva now. What other form of evidence could
17 practically a large agency come up with that would
18 satisfy your requirement?

19 MR. SILVA: Well, I think that there's another
20 source beside the courts. The courts are frequently
21 reluctant to engage in activities which are seen just to
22 benefit an agency, but hopefully most law enforcement
23 agencies have a working relationship with the DA's
24 office, and the DA on the case would simply request a
25 copy of the document from the court. And speaking from

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1 my personal experience with the Placer County DA's
2 Office, I've never had a court reject a request for a
3 copy of an evidence list. In fact, most courts sua
4 sponte provide it to the parties because they have to be
5 able to track the evidence which was admitted or which
6 was offered but not admitted. So that as long as
7 there's some sort of working relationship between the
8 DA's office and law enforcement, which I think the
9 system would fall apart if there wasn't, that would be
10 the source for the documentation.

11 MS. STEINMEIER: With all due respect, Placer

12 County is a small county, so I'm going to go back to
13 Mr. Johnson to find out in Los Angeles is that another
14 practical solution or impractical?

15 MR. JOHNSON: I -- we handle between 15- and
16 20,000 narcotics cases a year in Los Angeles. You're
17 talking about trying to track each one of these to find
18 out where in the process it may have reached a
19 conclusion, whether it was at the arraignment, where
20 obviously no evidence was introduced, or at the
21 preliminary hearing, or did it go to trial, this would
22 be difficult.

23 MS. STEINMEIER: If you had to create a tracking
24 system, though, for that, that would be part of the
25 mandate or part of the reimbursable expense?

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1 MS. STONE: It's not included as a reimbursable.

2 MS. STEINMEIER: In the statement of decision.

3 MS. STONE: In the statement of decision.

4 And the other thing we were looking at is the
5 costs to prepare, if this type of documentation or
6 tracking were desired by the State Controller's Office,
7 would far and away exceed the cost if you paid for the
8 original digital imaging and then we only take --
9 obviously pictures only printed as they are needed,
10 would be so much more -- or less expensive, less labor
11 intensive for a place the size of LAPD. I mean,
12 obviously, if you were Alpine or Del Norte County, you'd

13 be in a much different situation. But here we're really
14 dealing with economies of scale, 20,000 narcotics cases,
15 9,000 officers, and that's just for the metro LAPD.

16 MS. STEINMEIER: I guess I'm looking for a
17 pragmatic solution, Mr. Johnson, that would satisfy the
18 Controller's Office, again in my effort to prevent
19 incorrect reduction claims, which is one of my -- I
20 want -- all of our concerns. What could be feasible
21 that you could produce for them that would indicate that
22 it had actually been brought in evidence?

23 CHAIRPERSON PORINI: Within the statute.

24 MS. STEINMEIER: Right. Using the state.
25 Right. Exactly. Do you have a suggestion?

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1 MR. JOHNSON: The only thing that --

2 MS. STEINMEIER: Oh, wait, Mr. Lazar has a
3 question.

4 MR. LAZAR: What about a copy of the photograph
5 attached to it?

6 MS. STEINMEIER: You've got to prove that it was
7 in evidence. That's the problem.

8 CHAIRPERSON PORINI: Yeah.

9 MR. JOHNSON: Actually, the courts in Los
10 Angeles require multiple images to be printed on each
11 case, and so we're talking about --

12 MS. STEINMEIER: Do they give you a receipt for

13 that?

14 MR. JOHNSON: No.

15 MS. STEINMEIER: No.

16 MR. JOHNSON: Essentially our costs -- to get
17 down to the nitty-gritty, our costs are really the labor
18 to get the image and the cost of imaging equipment,
19 which is not all that expensive. I mean, the imaging
20 stations were -- we bought five of them. I think they
21 were 5- or \$6,000. With computers they were maybe ten,
22 so \$50,000. The computer server we're going to store
23 this on was maybe another 50-, \$75,000. \$125,000.

24 The ongoing costs would be the actual number of
25 pictures we print that officers request for court use

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1 and the labor necessary to produce the images, the staff
2 time in the laboratory, the chemists that actually sit
3 there and do that work. Again, I don't -- I never
4 wanted them to take pictures. We in the laboratory
5 never wanted to have that responsibility. But the
6 courts have forced us into the situation where we're
7 forced to take pictures of this evidence.

8 And because of the logistics problems in trying
9 to go back and pick up packages again, redo the same
10 work, and reopen the package, interject another --
11 possibly another individual into the chain of custody,
12 it was more cost-effective, we believe, to set it up the
13 way we did, which is we handle it in the normal course

14 of business. It means the package is only handled once.
15 We don't have to retrieve it out of the vault. Once
16 it's in the vault it's securely stored. It makes
17 everything simpler and easier to do -- to deal with,
18 excuse me.

19 MS. STEINMEIER: You haven't given me the
20 practical solution.

21 MR. JOHNSON: As far as actually --

22 MS. STEINMEIER: You don't have one.

23 MR. JOHNSON: No. I don't know how I'm going to
24 tell the clerk -- how I'm going to tell the clerk of the
25 superior court that they have to provide me with

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1 information, short of someone telling them that they
2 have got to provide it for me. They are not --
3 obviously not in the business of making me happy. They
4 have their own work to do.

5 MS. STEINMEIER: It seems like they should give
6 you a receipt for the evidence you turned in.

7 MS. STONE: The problem has been created,
8 Ms. Steinmeier, by the requirement inserted by your
9 staff that the activities limited to photographs
10 actually introduced or offered into evidence as exhibits
11 and that claimants must provide supporting documentation
12 with that, I mean, and that is main problem. From a
13 logistic standpoint, it is impossible so to do.

14 CHAIRPERSON PORINI: Okay. Mr. Sherwood.

15 MR. SHERWOOD: It sounds like a significant
16 problem. It is a concern, but I still get back to the
17 issue when I go through the staff's analysis, basically
18 on page 7, about four or five paragraphs down, staff
19 further recommends limiting reimbursable activity to the
20 cost of the photographs actually offered into evidence
21 as exhibits. This would conform to the reimbursable
22 activities in the language of the test claim statute,
23 which is limited to exhibits offered by the State or
24 defendant or exhibits introduced to the court.

25 I feel for your situation. I understand where

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1 you're coming from. It's going to be a difficult
2 situation, but I just don't see where we as a board have
3 any other option but to agree with staff's
4 recommendation on this issue.

5 CHAIRPERSON PORINI: Further questions or
6 comments? Motion?

7 MS. WILLIAMS: I'd like to move staff
8 recommendation.

9 MR. SHERWOOD: Second.

10 CHAIRPERSON PORINI: We have a motion and a
11 second. Further discussion?

12 Roll call, please.

13 MS. HIGASHI: Mr. Sherwood.

14 MR. SHERWOOD: Aye.

15 MS. HIGASHI: Ms. Steinmeier.
16 MS. STEINMEIER: Aye.
17 MS. HIGASHI: Ms. Williams.
18 MS. WILLIAMS: Aye.
19 MS. HIGASHI: Mr. Lazar.
20 MR. LAZAR: Aye.
21 MS. HIGASHI: Ms. Porini.
22 CHAIRPERSON PORINI: Aye.
23 Thank you.
24 MS. STONE: Thank you very much.
25 CHAIRPERSON PORINI: All right.

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1 MS. HIGASHI: This brings us to our last item,
2 item 7. This is my report. I'll just give you a couple
3 of updates that have occurred since the report was
4 submitted to you. One update is that the local
5 government claims bill language is at the assembly
6 budget committee. It has not yet been introduced. We
7 expect it to be introduced very shortly with the rest of
8 the trailer bills that will be introduced. As soon as
9 we have a number, we will report that number to the
10 interested claimants.

11 Regarding the agendas that we have itemized on
12 page 2 and 3 of my report, the only change that I'd like
13 to make at this time is that for the April agenda, the
14 Administrative License Suspension test claim is unlikely

15 to make that agenda, and it would be moved to the next
16 month.

17 CHAIRPERSON PORINI: Okay. Questions from
18 members?

19 MS. HIGASHI: And we have given you workload
20 data that you had questioned, so you could have a better
21 idea what it's like.

22 CHAIRPERSON PORINI: All right. Then at this
23 point in time we'll ask if there are any comments from
24 any member of the public here?

25 Okay. If not, we are going to adjourn into

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1 closed executive session pursuant to Government Code
2 11126, subdivision (e) to confer with and receive advice
3 from legal counsel for consideration and action as
4 necessary and appropriate upon pending litigation listed
5 in the published notice and agenda and to confer with
6 and receive advice from legal counsel regarding
7 potential litigation, and Government Code section 11126,
8 subdivision (a) and 17526 the Commission will also
9 confer on personnel matters listed on the published
10 notice and agenda. We will reconvene in open session
11 at -- when we complete our closed session.

12 (Whereupon the public portion of the meeting
13 concluded at 11:49 a.m.)

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1 REPORTER'S CERTIFICATE

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3 I hereby certify the foregoing hearing was held
4 at the time and place therein named; that the
5 proceedings were reported by me, a duly certified
6 shorthand reporter and a disinterested person, and was
7 thereafter transcribed into typewriting.

8 In witness whereof, I have hereunto set my hand
9 this 4th day of March, 2002.

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